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In the Supreme Court of the United States

October Term, 1975

No. 74-1409

LONNIE NORTH

Appellant,

vs.

C. B. RUSSELL AND NATHANIEL "TRAP" HELTON, JAILER OF HARLAN COUNTY

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF KENTUCKY

Brief of The Salt Lake Legal Defenders Association As Amicus Curiae

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Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF KENTUCKY

BRIEF OF THE SALT LAKE LEGAL DEFENDER ASSOCIATION AS AMICUS CURIAE

BASIS FOR FILING AND STATE OF THE INTEREST OF AMICUS CURIAE

The Salt Lake Legal Defender Association has requested and received consent to the filing of this Brief Amicus Curiae from both counsel for Appellant North and the Attorney General of the Commonwealth

of Kentucky who represents the Appellees. Filing of this Brief is thus premised on the consent of all the parties pursuant to Rule 42(2) of this Court. The original written consents of the parties have been filed with the Clerk of this Court.

The Salt Lake Legal Defender Association is a non-profit organization which through contractual agreement with the County of Salt Lake, State of Utah has the responsibility for providing criminal defense services to the indigent criminally accused in Salt Lake County. This responsibility requires the Salt Lake Legal Defender Association to represent individuals before non-lawyer Justices of the Peace in Salt Lake County. Furthermore, the Salt Lake Legal Defender Association, through counsel, has recently challenged the constitutionality of the use of non-lawyer justices of the Peace in Salt Lake County in the case of *Shelmidine and Reeves v. Jones et. al.* (Third District Court No. 224948). In that case the Court for the Third Judicial District in and for Salt Lake County ruled that the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States bar the imposition of any jail sentence by a non-lawyer or lay justice of the peace. This case is now on appeal to the Supreme Court of the State of Utah.

Amicus Salt Lake Legal Defender Association submits that the resolution of the instant case, *North v. Russell*, will ultimately resolve the issues extant in *Shelmidine and Reeves vs. Jones et. al.* as well as having great effect on the justice of the peace system in

Salt Lake County and therefore on the jurisdiction of the *Amicus Salt Legal Defenders Association* in those tribunals. Therefore *Amicus Salt Lake Legal Defender Association* respectfully requests consideration of this Brief in support of the Appellant North in the instant case.

SUMMARY OF ARGUMENT

Point I

Elemental concepts of Due Process of Law as embodied in the Fifth and Fourteenth Amendments to the Constitution of the United States demand at this point in time that a criminally accused faced with any change which may result in imprisonment have his case tried before a lawyer judge. Such an argument for a legally competent tribunal is not new but finds its foundation in the theoretical basis of Magna Carta as well as evolving concepts of ordered liberty in Twentieth Century America. The recent judicial as well as legislative trend in the State Courts and Legislatures of this country is to severely limit the jurisdiction of non-lawyer judges who heretofore have presided over the trial of various criminal offenses for which they lack adequate training, knowledge and legal expertise. This trend clearly indicates that the unproven assertions that the system of justice in many states such as Utah and Kentucky with large rural areas will not survive if law trained judges are mandated, is simply unfounded. Furthermore, your amicus does not argue for the death knell of the lay justice system, but merely that it be

brought within the reality of this Courts recent decisions on the right to counsel in criminal cases.

Due process in the system of American Criminal Justice is demanded in the first instance and hence the fact that an individual may ultimately have his case resolved by a competent tribunal is of little comfort to the individual who must wait in jail while his trial de novo appeal is prepared. Such de novo review besides being of little comfort is of equally little constitutional significance since valuable rights may be lost by the use of "convenient" lay judges. Notably to be lost in such a scheme is the accused's right to a speedy trial in the first instance before a competent judge.

II

The use of non-lawyer judges in the inferior courts of this country besides being an out moded vestige of an earlier era in this country's development, also has the effect of nullifying other rights long since accorded the criminally accused in the United States. The use of non-lawyer judges in criminal cases where a jail sentence may result presents a clear nullification of an accused's right to counsel guaranteed by the Sixth and Fourteenth Amendments to the Constitution of the United States. Such a situation presents the spector of a constitutionally mandated legal advisor to the criminally accused whose role becomes constitutionally meaningless since his legal arguments are rendered useless falling as they do on the deat ear's of a judge who

has neither the legal expertise or training to comprehend what counsel is talking about. Nowhere is such an absurd situation more manifest then in the type of charge which the Appellant North must defend. Although a misdemeanor, driving while intoxicated presents complex issues on the admissibility of evidence, and oft times involves complex constitutional questions as well as evidentiary issues of varying complexity. To rule that a non-lawyer judge's unguided rulings on such questions comports with the constitutional requirement of counsel by the side of the accused to aid the accused in raising such issues or to defend against the presentment of such issues, is tantamount to making counsel's assistance meaningless. Clearly that should not be the effect of this Court's decisions mandating the assistance of counsel in criminal cases where a jail sentence may be the ultimate result.

POINT I

DUE PROCESS OF LAW REQUIRES THAT A JUDGE IN A CRIMINAL CASE IN WHICH A JAIL SENTENCE MAY BE IMPOSED BE TRAINED IN THE LAW.

When, in 1215 at Runnymede, King John was compelled by his barons to sign the Magna Carta, he swore to two propositions relevant to this case:

> No free man shall be taken, imprisoned, disseised, . . . or in any way destroyed, nor will we proceed against or prosecute him, except by the

> lawful judgment of his peers and by the law of the land. Chapter 39
>
> We will appoint as justiciaries, constables, sheriffs or bailiffs only such men as know the law of the land and will keep it well. Chapter 45[1]

Your amicus submits this brief to urge that, in 1975, Constitutional guarantees of due process derived in part from Magna Carta include the right to be tried by a judge trained in the law, and capable as today only a law trained person can be, of knowing the law, and applying it competently.

This Court has held that all defendants are entitled to a fair trial, *Adamson v. California*, 332 U.S. 46, reh. den. 332 U.S. 784 (1947); *Tumey v. Ohio*, 273 U.S. 510 (1927). While the Fourteenth Amendment is not a guarantee that a trial shall be devoid of error, if the error is gross and obvious, coming close to the boundary of arbitrary action, there is a violation of due process, *Roberts v. New York City*, 295 U.S. 264 (1934). Due process requires that the varied criminal procedure in the several states be subject to the overriding requirement of fundamental fairness implicit in the concept of ordered liberty. *Mapp v. Ohio*, 367 U.S. 643, 655 (1961).

No matter how well-meaning a lay judge may be, there are compelling reasons why such an untrained

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[1] A. E. Dick Howard, Magna Carta. Text and Commentary 43, 45 (1964).

judge should not be permitted to perform judicial functions in proceedings which affect the liberty of a criminally accused.

The Supreme Court of California has recently held, in the case of *Gordon v. Justice Court*, 115 Cal. Rptr. 632, 12 Cal. 3d 323, 525 P. 2d 72 (1974), cert. den. 43 L.Ed. 2d 415 (Feb. 18, 1975) that the use of non-lawyer judges in criminal cases where a jail sentence may result is a patent denial of due process of law.

The court held:

> . . . we conclude that, under today's advanced standards, due process demands that henceforth a defendant charged with an offense carrying a possible jail sentence must be provided with an attorney judge to preside over the proceedings, unless he elects to waive such right. (525 P. 2d at 79)

Gordon and Arguijo, the defendants in that case, were brought before different non-attorney justice court judges to stand trial for misdemeanors, punishable with a possible jail sentence. Gordon was charged with disturbing the peace and failure to disperse and Arguijo with driving under the influence of alcohol. The California Supreme Court, in bank, unanimously held that due to the lack of legal training "a reasonable likelihood exists that a non-attorney judge will be unable to afford a defendant a fair trial." (525 P. 2d at 79).

Justices of the Peace in Utah have criminal jurisdiction which is similar to the jurisdiction of the inferior courts in Kentucky. The justices in Utah preside over

cases involving several specified misdemeanors and all misdemeanors punishable by up to a Three Hundred Dollar ($300.00) fine or six (6) months in prison or both, Section 78-5-4 *Utah Code Annotated* (1953). The jurisdiction of the California justice courts, struck down in *Gordon*, was quite similar (See 525 P. 2d at 74). At the outset of that case the California Court stated that no distinction of constitutional dimension could be made solely on the basis that the justice court's deal exclusively with misdemeanor cases. In this regard it was noted that the constitutional and legal issues involved in a misdemeanor case:

> . . . may be as complex as those involved in a trial of a more serious offense. (See *Argersinger v. Hamlin*, 407 U.S. 25, 33, 92 S. Ct. 2006, 32 L. Ed. 2d 530). There is little guarantee that the background of a non-attorney judge will have prepared him to recognize these issues and resolve them according to established legal principles. (525 P. 2d at 76).

While noting the breadth of the recent development of constitutionally mandated criminal procedure, the court further opined that such functions as charging the jury, taking guilty pleas, making difficult sentencing decisions, and ruling on difficult constitutional and evidentiary issues demand highly developed legal skill and training and can not be performed by one not trained in the law (525 P. 2d at 72). Interestingly the court noted that ruling on the complex evidentiary issues surrounding the administering of various blood alcohol tests in driving under the influence cases is one instance where the non-attorney judge is not going to

be able to perform satisfactorily. The Appellant in the instant case, and the Plaintiff's in *Shelmidine and Reeves v. Jones et al*, all charged with driving under the influence, thus face the same quandry as that which the California Court found so telling in making their decision.

The California Court found support for its landmark ruling in the dynamic quality of the concept of Due Process of Law. Quoting at length from Mr. Justice Frankfurter's opinion in *Wolf v. Colorado*, 338 U.S. 25, 27 (1949) Justice Burke speaking for the unanimous court stated:

> Whatever the justification for permitting laymen to preside over criminal trials in the 1800's, it is well recognized that even long-standing practices must meet the advancing standards of due process. (525 P. 2d at 75).

The court then noted that this Court's landmark right to counsel decisions of *Gideon v. Wainwright*, 372 U.S. 335, (1963) and *Argersinger v. Hamlin*, 407 U.S. 25, (1972), recognized that the complexities involved in defending oneself in a criminal trial are beyond the capabilities of the average layman untrained in the law, regardless of the severity of the penalty. Taking the next step the California court said:

> . . . it logically follows that the failure to provide a judge qualified to comprehend and utilize counsel's legal arguments likewise must be considered a denial of due process. (525 P.2d at 78).

Thus, the decision by the California Supreme Court sets forth a definitive ruling that the due process of law embodied in the Fourteenth Amendment to the United States Constitution finds the use of non-lawyer judges in criminal trials where jail-time may result, constitutionally impermissible. Those few other cases which have dealt with this specific issue are not so definitive and are readily distinguishable, as was noted by the California Court. (525 P. 2d at 78).

Three of these cases, *City of Decatur v. Kushner*, 43 Ill. 2d 334, 253 N.E. 2d 425 (1969); and *Crouch v. Justice Court*, 7 Ariz. App. 460, 440 P. 2d 1000 (1969) and *Melkean v. Avent*, 300 F. Supp 516 (D.C.N.D. Miss. 1969) are pre-*Argersinger v. Hamlin* decisions. The precedential value of these cases is therefore of limited validity considering the California Court's justified reliance on the *Argersinger* rationale for its decision. Furthermore, in none of these cases was the issue in the instant case really thoroughly discussed. In *City of Decatur v. Kushner* the issue seems to have been raised by counsel as an afterthought and for the first time on appeal. The Supreme Court of Illinois casually dismissed the constitutional issue with citations only to Am. Jr., C.J.S., and state statutory and constitutional provisions.

In *Crouch v. Justice Court*, the intermediate appellate court in Arizona dealt solely with the issue of whether allowing a Justice of the Peace to instruct the jury as to the law in a criminal misdemeanor case was a

denial of due process. The court in *Crouch* similarly did not reach the precise issue at the bar today.

Melkean v. Avent, 300 F. Supp. 516 (D.C.N.D. Miss. 1969) is even less in point. This pre-*Argersinger* decision embodied an action in Federal Court to have the entire Mississippi Justice of the Peace Court System declared unconstitutional. Importantly, however, the action in the Justice Court upon which the plaintiff asked for injunctive relief in Federal Court was a civil suit sounding in *contract*, and not a criminal action. The issue as to whether a non-lawyer judge may constitutionally preside over a criminal trial where a jail sentence may result was not even discussed peripherally.

The only real authority which may be found in opposition to the California Court's decision in *Gordon* is the series of decisions from the Kentucky Court of Appeals one of which is the instant case involving the Appellant North. *Ditty v. Hampton*, Ky., 490 S.W. 2d 772 (1972) app. dism. 414 U.S. 885 (1973); and *North v. Russell*, Ky., 516 S.W. 2d 103 (1974) vac. and rem. 95 S. Ct. 673 (1974). *Ditty v. Hampton*, is the bench mark in Kentucky and the Court, therein ruled, post-*Argersinger*, that due process does not require that the court in a criminal case be presided over by a lawyer judge. The conclusion of that court is best indicated by the following statement:

> . . . we think it is clear, accepting due process as a living principle, that advancing standards or changing conditions *have not yet* made the lawyer judge a condition of fundamental fairness. (490 S.W. 2d at 772). (Emphasis Supplied)

The California Court, specifically citing ***Ditty v. Hampton***, unequivocably disagreed:

> The people point out that the courts of several states have concluded that the use of non-attorney judges is consistant with the demands of due process . . . [citing ***Ditty v. Hampton***, supra, ***Crouch v. Justice of the Peace Court*** supra; and ***City of Decatur v. Kushner***, supra] . . . yet, none of these cases convincingly resolved the inherent inconsistancy in guaranteeing a defendant an attorney to represent him without providing for an attorney judge to preside at the proceedings. As we have seen a defendant's right to a fair trial may be substantially abridged by the use of a non-attorney judge. (***Gordon v. Justice Court***, supra, 525 U. 2d at 78).[2]

Recently the District Court of the Third Judicial District in and for Salt Lake County, State of Utah, has followed the rationale of the California Court in *Gordon* in ruling on the constitutionality of Utah's Justice of the Peace System. In that case, ***Shelmidine and Reeves v. Jones et al***, which is presently on appeal to the Supreme Court of Utah, the District Court held:

> . . . that the practice under Utah law which allows non-lawyer or lay justices of the peace to impose a jail sentence or imprisonment constitutes a denial of a criminal defendant's right to a fair trial in violation of the mandate of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. To the extent

[2] And, it might be noted parenthetically that the circuit court judge in Kentucky in **Ditty v. Hampton** found the use of non-attorney police court judges in criminal cases a denial of both due process and equal protection.

> that Section 78-5-4, Utah Code Annotated, authorizes lay justices of the peace to impose imprisonment, it, too, is violative of the guarantees under the Federal Constitution of Due Process, of the right to fair trial and of the right to counsel, and is void. (Memorandum Decision at 6 of Judge Stewart M. Hanson, Jr.)

Your Amicus submits, that the California Court in *Gordon*, and Judge Hanson's opinion in ***Shelmidine and Reeves*** states the better reasoned rule and that Due Process of Law requires an attorney judge to preside over any criminal case where a jail sentence may be the result of a conviction.

The legislative trend in the United States also supports this point. An increasing number of jurisdictions are abandoning lay judge systems. At the present time, the laws of 15 jurisdictions exclude lay judges from hearing cases in which the defendant is charged with a crime punishable by imprisonment: Connecticut, the District of Columbia, Georgia, Illinois, Louisiana, Maine, Michigan, Missouri, New Jersey, Oklahoma, Rhode Island, Tennessee, Texas, Vermont and Wyoming. Of these 15 jurisdictions, moreover, 11 have also precluded lay judges from presiding over preliminary hearings and issuing search and arrest warrants. These facts indicate a significant trend toward the abolition of lay judge jurisdiction over criminal matters in the various states.

A model for the states was provided by the Federal Magistrates Act, 82 Stat. 1107, 28 U.S.C. Section 631 (1)(b)(1) (1968). That Act replaced Title 28, Chap-

ter 43 of the United States Code which had provided for United States Commissioners who were not required to have legal training. The new law requires all full-time federal magistrates to be members of the bar. The rights of defendants in state and local courts are just as precious as those of federal defendants. Moreover, it was the consensus of the 1971 National Conference on the Judiciary that, "judges should be full-time officials, professionally trained in the law and aware of its traditional values." (Consensus Statement of the National Conference on the Judiciary", 55 J. Amer. Jud. Soc. 29, at 30 (1971).

The most recent legislative limitation on the use of non-lawyer judges is found in the recent revision of the statute found constitutionally wanting by Judge Hanson in *Shelmidine and Revves v. Jones et al.* In response to the Utah District Court's decision in that case a Special Session of the Utah legislature recently passed legislation which gives a defendant in a criminal case the right to be tried and sentenced by a judge who is a member of the Utah State Bar Association. This statute, which takes effect on September 2, 1975, clearly shows that the often alleged problems of travel, transportation, and lack of an adequate number of lawyers can be overcome, while providing lawyer judges for all criminally accused. It is often argued that in states such as Utah and Kentucky where there are few lawyers in

many of the rural counties and long distances to travel to the various county seats where the Courts of General Jurisdiction sit, that requiring law trained judges for the criminally accused in all misdemeanor cases becomes an impossible task. House Bill No. 1 which amends Section 78-5-4, Utah Code Annotated (1953) shows however that such arguments have little substance. This legislation provides that District Court Judges, who must be lawyers in Utah, may hear the cases as Justices of the Peace Pro Tempore or appoint a member of the Utah Bar to sit as a Justice of the Peace Pro Tempore in order to accord the criminally accused his right to a competent tribunal. This simple solution to the problem in Utah overcomes those commonly voiced objections and the alleged problems in mandating lawyer judges in our inferior courts. This simple but effective response by the Utah Legislature gives effect to the wisdom inherent in Judge Hanson's statement that:

> Modern transportation and communication have considerably alleviated much of the problem earlier encountered in effectuating a viable means of administering effective and speedy justice on the misdemeanor level. (Memorandum Decision at 3)

And this is true even though, as Judge Hanson noted, of the 29 Counties in Utah there are still eight counties with two or less resident attorneys and five counties with no resident attorney.

A

THE DENIAL OF DUE PROCESS BY REQUIRING TRIAL BEFORE A JUDGE WITHOUT LEGAL TRAINING IS NOT REMEDIED BY TRIAL DE NOVO APPEAL.

The provisions of Kentucky and Utah law granting a trial de novo on appeal is not an adequate substitute or remedy for a trial in the first instance before a law trained judge competent to rule on legal issues. In *Ward v. Village of Monroeville*, 409 U.S. 57, (1972), this court ruled that petitioner convicted of two traffic offenses and sentenced to a $50 fine on each offense was denied his right to be tried by a disinterested and impartial judge as guaranteed by Fourteenth Amendment due process where the trial took place before a village mayor empowered by Ohio statute to sit as Judge. The court based its conclusion on the fact that the fines and forfeitures imposed by the mayor as judge went to the village treasury and constitutel a major portion of village funds. The Respondent argued that any error in the trial before the mayor was cured by the availability of trial de novo on appeal. The Court specifically rejected this contention.

> Respondent also argues that any unfairness at the trial level can be corrected on appeal and trial de novo in the County Court of Common Pleas. *We disagree*, this 'procedural safeguard' does not guarantee a fair trial in the mayor's court . . . Nor, in any event, may the State's trial court procedure be deemed constitutionally acceptable simply because the state eventually offers a defendant an impartial adjudication.

> *Petitioner is entitled to a neutral and detached judge in the first instance.* 409 U.S. at 61-62. (Emphasis Supplied).

Utah like Kentucky has made provision for de novo appeal from the Justice of the Peace Courts. Article VIII, Section 9 of the Utah Constitution and Section 78-3-5 *Utah Code Annotated* (1953) provide for de novo appeal from justice of the peace courts in Utah, as does Section 78-4-17 *Utah Code Annotated* (1953).[3] Counsel for the appellees will undoubtedly rely on *Colten v. Kentucky*, 407 U.S. 104, (1972) for the proposition that this right to a trial de novo in a superior court somehow clears up any constitutional infirmities in the use of non-attorney justices of the peace. However, *Colten* was basically concerned with whether or not on a trial de novo appeal from a justice court to a superior court of general jurisdiction, the superior court could enhance the punishment given the defendant in the justice court. Specifically, the issue was whether *North Carolina v. Pearce*, 395 U.S. 711 (1969) was applicable to de novo appeals. The issue in the instant case, whether a non-attorney judge might preside over a criminal case where a jail sentence might result, was not at issue. In point of fact, *Colten's* appeal was from the imposition of a fine of $10.00 and not a jail sentence. And, the court specifically noted that the trial judge in that Kentucky justice court was a

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[3] In Colten v. Kentucky, 407 U.S. 104 (1972) the Court noted that, following the trial in the Kentucky circuit court on appeal de novo, defendant had further appeals "in the same manner as a person tried initially in the general criminal court," 407 U.S. at 113. In Utah there is no appeal to the Utah Supreme Court from the district court decision except where the case involves the validity or constitutionality of a statute.

lawyer. (407 U.S. at 114 n. 11). The holding of this Court was expressly tied to the *North Carolina v. Pearce* issue:

> We cannot say that the Kentucky trial de novo system, as such, is unconstitutional or that it presents hazards warranting the restraints called for in *North Carolina v. Pearce*, . . . (407 U.S. at 119). (Cf. Marshall, J. in dissent 407 U.S. at 122-127).

Interestingly, the Court in *Colten* conceded that the justice courts, in Kentucky at least, are incapable of according an accused his constitutional rights:

> . . . the inferior courts are not designed or equipped to conduct error-free trials, or to insure full recognition of constitutional freedoms. They are courts of convenience to provide speedy and inexpensive means of disposition of charges of minor offenses. (407 U.S. at 117).

Colten's worth as precedent on the issue in the instant case must be limited to its facts, for as was noted in that case:

> Proceedings in the inferior courts are simple and speedy; and, if the results in *Colten's* case are any evidence, the penalty is not characteristically severe. (407 U.S. at 118).

Your Amicus agrees that to the extent a fine and not a jail sentence is imposed, then trial de novo review may cure any defect in the "simple and speedy" justice of a justice court of convenience. However, where the threat of imprisonment exists, then the defendant must be accorded a trial before an attorney-judge as a matter

of right. Since at that point the potential harm to the accused outweighs any "convenience" factor.

Moreover, as indicated above, *Ward v. City of Monrooville* clearly indicates that trial do novo review is no talisman which makes the constitutional infirmaties recognized by this Court in *Colten* in the inferior courts somehow vanish. The Constitution of the United States *does* demand a fair trial in the "first instance."

In conclusion, the dynamic concept of Due Process of Law as employed in *Gordon* requires that the present system of allowing non-attorney judges to preside over criminal cases where a jail sentence may result be declared unconstitutional as violative of the Fourteenth Amendment to the Constitution of the United States.

POINT II

THE PRACTICE OF HAVING NON-LAWYER JUDGES PRESIDE OVER CRIMINAL CASES IN WHICH A JAIL SENTENCE MAY RESULT PRESENTS A DEFACTO DEPRIVATION OF A CRIMINALLY ACCUSED'S RIGHT TO COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES.

The practice of having non-lawyer judges preside over criminal cases in which a jail sentence may be im-

posed, is a violation of a criminally accused's right to counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution in that non-lawyer judges cannot be assumed to have the ability to understand complex legal arguments.

The practice of allowing lay judges to preside over criminal trials renders the Sixth Amendment right to counsel nugatory and constitutes a violation of due process of law. In *Gideon v. Wainwright*, 372 U.S. 342 (1963), and its companion case, *Douglas v. California*, 372 U.S. 353 (1963) the U.S. Supreme Court held the Sixth Amendment right to the assistance of counsel applicable to the states by incorporation into the Fourteenth Amendment.

Like the judges of the inferior courts of Kentucky, lay justices of the peace in Utah exercise criminal jurisdiction over various and sundry criminal offenses. (Brief of Appellant at 17). Jurisdiction of lay justices in Utah extends over such misdemeanors as petty theft, assault and battery, breach of the peace and all misdemeanors involving up to a $300 fine or six (6) months imprisonment or both. Section 78-5-4 *Utah Code Annotated* (1953).

This Court has held that the right to counsel at trials extends to all indigent criminally accused facing a jail sentence. *Argersinger v. Hamlin*. The fundamental character of this right was reiterated by giving the *Argersinger* decision full retroactive effect in *Berry v. City of Cincinnatti*, 414 U.S. 29 (1973). However, the right to counsel is rendered illusory where counsel

must argue before a judge who is not adequately trained in the law. If a judge is not able to rely on his own knowledge of the legal merit of counsel's argument, he is apt to trust the counsel of the lawyer that he is most familiar with, as he lacks an independent standard by which to judge. This becomes the "rule by fiat" denounced by Dean Pound, when he noted:

> *Administration of Justice According to Law* has six advantages: (1) Law makes it possible to *predict* the course which the administration of justice will take; (2) *Law secures against errors of individual judgment*; (3) Law secures against *improper motives* on the part of those who administer justice; (4) Law *provides* the *magistrate with standards* in which the ethical ideas of the community are formulated; (5) Law gives the magistrate the *benefit* of all the experience of his predecessors; (6) Law *prevents sacrifice of ultimate interests*, social and *individual, to the more obvious and pressing but less weighty immediate interests*. Pound, "*Justice According to Law*," *Essays on Jurisprudence from the Columbia Law Review*, 230 (1963) (Emphasis in Original)

Dean Pound also observed the harmful consequences of rule by fiat:

> With no training in the law, no training in the process of judicial thought, and no mental habit of mind acquired by constant experience in legal reasoning, it would indeed be strange if a [lay judge] did not treat each case as a unique proposition. He has no category or class into which he may place it, no analogies from which to draw to solve the new problem before him. He has no legal rules, principles or standards by which

to judge the merits of the controversy to be decided. Wholly unlike the judge who is trained in the law, he has no precedents to guide him. In deciding the cause before him, the lay judge is necessarily limited by his own personal experience acquired in the short span of a single lifetime. He cannot call on the legal experience of the ages to assist him but is helpless to any more than apply his own personal notions of right and wrong to the case at hand. The justice which such tribunal is capable of dispensing is but the outcropping of the experiences of a personality, often limited and warped by passion and prejudice, and at best, as variable as the personalities of the justices who comprise [the system] . . . Such justice is not justice at all. It is unequal, uncertain, and capricious. Smith, *The Justice of the Peace System*, 15 Cal. L. Rev. 118, 127-128 (1927) quoting from Pound, *Outlines of Lectures on Jurisprudence*, 75 (3rd Ed)

A notable example of who the non-lawyer judge will turn to when a problem arises finds startling effect in Utah. The means provided by the State of Utah to shield the justices from legal error resulting from their lack of learning in the law is a Manual for Justices of the Peace in the State of Utah prepared by Brigitte M. Bodenheimer in 1956. While the manual is written in a lucid and simple style, it is today hopelessly outdated and affirmatively misleading.[4] The non-law trained judge faced with a question of law and no means or ability to resolve it is likely to rely heavily on the representations of the County Attorney. The manual ex-

[4] This manual, we are told, is in the process of being revised and brought up to date.

pressly approves this practice. On page 14 the following advice appears:

> There will no doubt be many occasions, however, when the answer to his problem cannot be found in this book. In such case it is recommended that the justice get in touch with the county attorney of his county who is the legal advisor of the county's precinct officers.

Again at page 59 the manual notes:

> The defendant is often not represented by counsel in a justice court. *County attorneys are accustomed to that fact and are generally able to play the role of both prosecutor and defense attorney with fairness to both sides.* (Emphasis Supplied).

At page 71, The Justice of the Peace is given advice on instructing the jury:

> Sometimes after the justice has finished his instructions to the jury, one or both attorneys may ask him to add further charges to the jury, which the attorney reads to him. The justice then says: 'I so charge' or 'I refuse to so charge.' *If he is in doubt on how to rule, the county attorney, if present, will generally come to his aid.* (Emphasis Supplied).

The effect of this advice in the official Manual is to invite the "neutral" judge to defer, when in doubt, to the decision of one of the litigant's counsel. The right to a decision by an impartial tribunal is denied in fact whenever the untrained judge is called upon to decide a question of law without the knowledge or training to

decide it: in that situation he is officially advised to *rely* upon the prosecutor! Defendant's right to be heard in his own defense becomes his right to be heard by opposing counsel.

A judge who has been a lawyer is in the habit of reading the advance sheets containing state appellate and United States Supreme Court cases as well as law review articles. A layman is not likely to be learned in such complex matters as the rules of evidence. The difficulty of the subject matter of a criminal case is nowhere better exemplified than in the Utah Rules of Evidence where the Hearsay Rule, Rule 63, for example, takes up some 21 pages embodying the Rule itself and the numerous exceptions to the Rule. Other examples become obvious from an even cursory perusal of Volume Eight of the Utah Code Annotated which contains the criminal code and code of criminal procedure.

The proper resolution of complex legal problems is often crucial to the outcome of cases within the justice's jurisdiction. Since the decision in *Mapp v. Ohio*, 367 U.S. 643 (1966), extending the Fourth Amendment's exclusionary rule to the states, this Court alone has decided literally hundreds of cases affecting the criminal trial process. These cases affect such interests, to name only a few, as: the right to be free from unreasonable search and seizure,[5] the prohibition against double jeop-

[5] **Chimel v. California**, 395 U.S. 752 (1969) (limitations on "search incident to arrest"); **Coolidge v. New Hampshire**, 403 U.S. 443 (1971) ("the plain view theory"); **Wong Sun v. United States**, 371 U.S. 471 (1963) (the "fruit of the poisonous tree" doctrine); **Spinelli v. United States**, 393 U.S. 410 (1968) (search warrant affidavits).

ardy;[6] the prohibition against self-incrimination,[7] the admissability of confessions;[8] the right to a "fair" [9] and speedy public trial,[10] including a jury of one's peers,[11] the right to confrontation and cross-examination;[12] the right to counsel;[13] and fair treatment in sentencing.[14]

As stated by the editors of the *Criminal Law Reporter*.

> From the 1960-61 term through the 1968-69 term, with the Fourteenth Amendment as a lever,

[6] **Ashe v. Swenson**, 397 U.S. 436 (1970) (collateral estoppel doctrine).

[7] **Griffin v. California**, 380 U.S. 436 (1965) (barring comment on failure to testify).

[8] **Miranda v. Arizona**, 386 U.S. 436 (1966) (procedural protections afforded during custodial interrogation); **Jackson v. Denno**, 378 U.S. 368 (1964) (determination of "voluntariness" of confessions).

[9] **Smith v. Hooey**, 393 U.S. 374 (1969) (unrelated incarceration does not abrogate right).

[10] **Walster v. California**, 394 U.S. 440 (1969) (the "totality of the circumstances" test for due process).

[11] **Baldwin v. New York**, 399 U.S. 66 (1970) (sixth amendment right to jury trial in misdemeanors).

[12] **Pointer v. Texas**, 380 U.S. 400 (1965) (invalidating use of prior testimony without opportunity for cross-examination).

[13] **Argersinger v. Hamlin**, 407 U.S. 67 (1972) (right to counsel in misdemeanors).

[14] **Tate v. Short**, 401 U.S. 395 (1971) (bars conversion of fine to imprisonment); **Boykin v. Alabama**, 395 U.S. 238 (1969) (waiving of rights in guilty pleas).

> nearly all the guarantees of the Fourth, Fifth and Sixth Amendments have been made binding upon the states. At the same time, numerous U.S. Supreme Court decisions have strengthened these guarantees. The court's extension of the mantle of federal protections to persons accused in State criminal proceedings and its bolstering of these protections have brought about dramatic changes in the criminal law.

It is safe to predict that changes in the criminal law will continue to be a source of increasing complexity and controversy in the criminal process. Moreover, resolution of cases within the jurisdiction of inferior courts requires not only ability to understand a highly complex, controversial and changing body of law, but also the ability to disregard the truthfulness and probative value of illegally obtained evidence which has been heard in its full and potentially incriminating detail. Because of the inability of the lay person to segregate the issue of truthfulness from the issue of admissibility and the issue of admissibility from the issue of guilt, the responsibility for making these determinations cannot constitutionally be delegated to a jury.[15]

Thus, the presence of defense counsel in court, his presentation of evidence, and his argument about the legal standards and matter of evidence is apt to fall

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[15] **Jackson v. Denno**, 378 U.S. 368 (1964) (procedure that leaves the factual determination of the voluntariness of a confession to the jury held to be invalid in view of the confession either in determining admissibility or n determning guilt) and **Bruton v. Unted States**, 391 U.S. 123 (1968) (co-defendant's confession inculpating the defendant cannot be used in a joint trial even if jury specifically instructed that confession was admissible only against the declarant).

upon deaf ears where the judge lacks an independent standard to apply. Since arguments based upon recent cases decided by this Court and State Courts in areas of constitutional law, as well as simple evidentiary matters, may not be comprehended by the lay judge, the constitutional guarantee of due process cannot be accorded the defendant. Due process of law requires not only that a person exercising a judicial function be fair and impartial but also that he be competent. The wisdom of the words of Justice Sutherland speaking for the Court in *Powell v. Alabama*, 287 U.S. 45, 69 (1932) decided over forty years ago are apposite in the instant case:

> Even the intelligent and educated layman has small and sometimes no skill in the science of the law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and the knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much, more true is it of the ignorant and illiterate, or those of feeble intellect.

The right to counsel at trial is equally as important to the preservation of justice in misdemeanors as in felony proceedings. ***Argersinger v. Hamlin***, supra. As Chief Justice Burger observed, concurring in ***Argersinger***:

> [A]ny deprivation of liberty is a serious matter. The issues that must be dealt with in a trial for a petty offense or a misdemeanor may often be simpler than those involved in a felony trial and yet be beyond the capability of a layman, especially when he is opposed by a law-trained prosecutor. There is little ground, therefore, to assume that a defendant unaided by counsel, will be any more able adequately to defend himself against the lesser charges that may involve confinement than more serious charges. Appeal from a conviction after an uncounseled trial is not likely to be of much help to a defendant since the die is usually cast when judgment is entered on an uncounseled trial record. (407 U.S. at 41).

It is clear, therefore, that Justice Courts in this Country cannot find justification from the fact that lay judges in justice courts are limited to trials of misdemeanors carrying a maximum penalty of six months imprisonment as is the case in Utah or 12 months as in Kentucky. The distinction between so-called "petty" and "serious" offenses has been expressly limited by this Court to the right to jury trial (by reason of the unique legal history of the jury) and has been notably rejected

as inapplicable to other due process rights in misdemeanor cases.[16]

For the same reasons a lay person can no longer be considered competent to preside over the criminal trials were a jail sentence may result within the jurisdiction of the Justice Courts of this Country. The right to counsel in these cases necessarily includes the right to a competent law trained tribunal to hear counsel. To conclude otherwise is to continue a system which requires that indigent criminal defendants must be provided with counsel who are attorneys but not that they must be provided with judges who are attorneys. This conclusion posits that the role of the judge who must decide or preside over a criminal case is less crucial and less constitutionally significant than the role of the counsel who must argue it. Your Amicus submits that this cannot be so.

The California Court's, obvious reliance on ***Argersinger*** in ***Gordon v. Justice Court***, lends credence to this assertion, and it is respectfully submitted that the Sixth Amendment Right to Counsel as applied to the States through the Fourteenth Amendment demands not only counsel at the side of the accused, but an attorney-judge presiding over the trial who is able to adequately respond to counsel when imprisonment may result from the charge.

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[16] **In re Oliver**, 333 U.S. 257 (1948) (right to public trial); **Pointer v. Texas**, 380 U.S. 400 (1965) (right to confrontation); **Washington v. Texas**, 388 U.S. 14 (1967) (right to compulsory process to secure attendance of witnesses); **District of Columbia v. Clawans**, 300 U.S. 617 (1937) (right to cross-examine).

CONCLUSION

The practice of allowing lay judges to try cases that affect the liberty of the accused violates the constitutional rights of those against whom, by an accident of geography, a complaint is filed in areas where a lay judge is sitting. The unfamiliarity of lay judges with criminal law and procedure necessarily results in such a lack of adherence to the legal precedents which are applied in other courts that the accused are deprived of due process of law and equal protection as required by the Fourteenth Amendment to the United States Constitution. In addition, the barrier to defense counsel's communication with an untrained judge as to the rules and legal nuances governing the defendant's rights, results in a de facto deprivation of the Sixth Amendment right to counsel as made applicable to the States by incorporation into the Fourteenth Amendment. Although large numbers of persons each year receive their first impressions of the American System of Criminal Justice in courts where non-lawyer judges preside, these courts, by and large, fail to meet professional standards of criminal law and procedure. Finally, the development of modern means of transportation and communication and the availability of sufficient numbers of professionally trained peresonnel, coupled with the current trend away from lay judge courts, should result in the discarding as a violation of due process of law such an antiquated system which was utilized as an expedient

to meet Eighteenth Century, not Twentieth Century, conditions.

Respectfully submitted,

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APPENDIX

APPENDIX I

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LARRY J. SHELMIDINE and JOHN F. REEVES, on their own behalf and on behalf of all others similarly situated in Salt Lake County, Utah,

Plaintiffs,

CHARLENE POLLY COOK,

Intervening Plaintiff;

VS.

CHARLES A. JONES in his capacity as Justice of the Peace of Precinct 4 of Salt Lake County, Utah; LYNN D. BERNARD, RALPH CHILDS, LYLE GUNDERSON, WAYNE GUNDERSON, GERALDINE CHRISTENSEN, HENRY H. PRICE, WARREN D. COLE, REX C. CONRADSON, ELMAR L. JOHNSON, all in their capacity as Justices of the Peace for Precincts in Salt Lake County, Utah,

Defendants.

MEMORANDUM DECISION

Case No. 224948

Plaintiffs challenge the practice of permitting non-lawyer justices of the peace to hear misdemeanor

cases in which a jail sentence could be imposed.[1] This challenge is founded upon three bases: That Due Process under the Fifth and Fourteenth Amendments of the United States Constitution requires that judges in criminal cases in which imprisonment may be imposed be lawyers; that the practice of permitting most of the justices of the peace throughout the state to be non-lawyers while at the same time requiring that judges of the city courts, whose jurisdiction is the same as the justice courts with regard to this type of offense, be lawyers, constitutes a denial of equal protection under the Fourteenth Amendment of the Constitution of the United States; that the right to counsel and, more fundamentally, the right to a fair trial, mandated by the Sixth and Fourteenth Amendments of the Federal Constitution are abridged and denied by allowing non-lawyer or lay judges to preside in any criminal case in which a jail sentence may be imposed.

By virtue of the foregoing assertions, plaintiffs are asking this Court to prohibit the defendants, each of whom is a non-lawyer or lay justice of the peace, from hearing cases involving the plaintiffs in which each

1 Section 78-5-4, Utah Code Annotated, provides that:

"Justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

(1) Petty larceny.

(2) Assault or battery not charged to have been committed upon a public officer in the discharge of his duties or to have been committed with such intent as to render the act a felony.

(3) Breaches of the peace, committing a wilful injury to property, and all misdemeanors punishable by a fine less than $300 or by imprisonment in the county jail or municipal prison not exceeding six months or by both such fine and imprisonment."

Section 76-3-301 provides that a fine of $299 may be imposed upon a conviction of a Class B or C misdemeanor or infraction. Section 76-3-204 provides that the sentence for a Class B misdemeanor may be for a term of imprisonment not exceeding six months and for a Class C misdemeanor for a term not exceeding 90 days. Under Section 76-3-205, no person convicted of an infraction may be imprisoned.

plaintiff is charged with the commission of a misdemeanor offense, the conviction of which could result in imprisonment.[2] Both plaintiffs and defendants have moved for summary judgment and, to that end, have stipulated that there are no material facts in dispute. Those stipulated facts are more fully set out in the memoranda filed by the respective parties with two minor exceptions noted in the record during oral argument, about which there is likewise no dispute which raises any issue of fact.

Justices of the peace courts in Utah, manned by non-lawyer judges, are courts of convenience, particularly in isolated rural areas typical of most of this state in which there are few, and sometimes no attorneys. In the early days of statehood there were so few attorneys and such great distances to be covered by those attorneys who were available that the system of justice in dealing with minor criminal offenses would have broken down completely if lawyer judges had been required. Thus, while city court, district court and Supreme Court judges were, from the inception of statehood and before, required to be lawyers, both the Constitution of the state of Utah and legislative enactment left open the question of qualifications of the judges of justice courts with respect to legal background and training.

Modern transportation and communication have considerably alleviated much of the problem earlier encountered in effectuating a viable means of administering effective and speedy justice on the misdemeanor level. Nevertheless, of the 29 counties in Utah there are

2 Plaintiffs Shelmidine and Reeves are charged with the crime of driving under the influence of intoxicating liquor, as is intervening plaintiff Cook, in violation of Section 41-6-44. This is a Class B misdemeanor.

still eight counties with two or less resident attorneys and five counties with no resident attorney, for lawyers, whose livelihood is dependent upon the services they are able to render to people, have tended to settle in the more populous regions of the state, requiring the inhabitants in many areas to travel some considerable distance to obtain legal counsel. The impact of this on the administration of misdemeanor offenses—the very type of offense with which a limited-jurisdiction, lay justice of the peace most frequently deals—is immediately apparent: One-third of the counties of the state do not have enough resident lawyers to staff the justice courts and still have a prosecutor and defense counsel. In Salt Lake County, where the heaviest concentration of lawyers is found, only one justice court judge is a lawyer.

With this background, the question before this court is whether the historically convenient and necessary lay justice of the peace system in Utah can withstand the developing mandates of Due Process, of fundamental fairness and of equal protection. The basic predicate is not whether a lay justice of the peace can conduct an error-free trial or whether he is capable of being fair and impartial, for Due Process does not guarantee an error-free trial, *Roberts vs. New York City* 295 U.S. 264 S.Ct., L.Ed. 2d (1934), nor does this Court have any doubt that for the most part lay justices of the peace are fully capable of fairness and impartiality. Rather, it is whether a non-lawyer judge has sufficient legal training, background and experience to afford a misdemeanant a fair trial, the end result of which may be imprisonment. In this context, "fairness" does not mean merely impartiality. Its meaning is of constitutional necessity more encompas-

ing. It alludes to a quality of justice which fully observes all rights, both substantive and procedural, of the citizen-defendant who has been charged with an offense against the society in which he lives, no matter how petty. Ideally, one would hope for an entire judiciary staffed with learned judges who, by intellect and passion, are able to discern the delicate and subtle nuances extant in our constitutional system by which the rights of the individual are balanced against the power of the government. While the ideal may not be perfectly met, we come as close as humanly possible by imposing rigorous standards of training, background, experience and temperament on our judges to achieve the highest quality of justice possible. To impose less than that does not meet the fundamental constitutional requirements of Due Process for a constitutionally fair trial where loss of liberty is a possible consequence. Due Process permits no compromise between fundamental rights on the one hand and convenience or necessity on the other.

If one is entitled, under the growing concepts of Due Process and fair trial, to legal counsel in a misdemeanor case where there is a possibility of imprisonment, *Argersinger vs. Hamlin,* 407 U.S. 25, 92 S.Ct. 2006, 32 L.Ed. 2d 530 (1972), see also *Gideon vs. Wainwright,* 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963), then Due Process, the right to a fair trial and the right to counsel likewise mandate that under such circumstances only a lawyer-judge, qualified by training, background and experience to comprehend and utilize counsel's legal arguments, can impose a sentence of imprisonment, *Gordon vs. Justice Court,* 115 Cal. Rptr. 632, 12 Cal. 3d 323, 525 P.2d 72 (1974), cert. den. 16 Cr.L. 1483, 1484 (1975).

The defendants nevertheless argue that the "two-tiered" system in Utah of *de novo* appeals meets the requirements of Due Process, if only after and by virtue of an appeal "anew" to a lawyer-judge, and thus saves the system from any constitutional infirmity. But must a defendant incur the added expense, both in time and money, of an appeal in order to be afforded Due Process: I think not. The availability of a trial *de novo* on appeal does not guarantee a fair trial *in the justice court,* the court with which we are here dealing. Plaintiffs are entitled to Due Process and a fair trial in the first instance. *Ward vs. Village of Monroeville,* 409 U.S. 57, 93 S.Ct. 80, 34 L.Ed. 2d 267 (1972).

This Court therefore finds and holds that the practice under Utah law which allows non-lawyer or lay justices of the peace to impose a jail sentence or imprisonment constitutes a denial of a criminal defendant's right to a fair trial in violation of the mandate of the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States. To the extent that Section 78-5-4, Utah Code Annotated, authorizes lay justices of the peace to impose imprisonment, it, too, is violative of the guarantees under the Federal Constitution of Due Process, of the right to fair trial and of the right to counsel, and is void.[3]

Accrodingly, defendants' motion for summary judgment is denied, plaintiffs' motion for summary

3 It is unnecessary to address the question of whether a lay judge can impose a fine since the only matter presently before this Court is whether a lay judge can affect the "liberty" of a defendant by imprisonment.

judgment is partially[4] granted, and the defendants are prohibited as lay judges from imposing imprisonment or jail sentences upon a conviction of the offenses over which they otherwise have jurisdiction. Counsel for the plaintiffs are directed to prepare and submit an Extraordinary Writ in the nature of prohibition in accordance with this memorandum decision.

Dated this 3rd day of June, 1975.

BY THE COURT:

Stewart M. Hanson, Jr.
District Judge

4 It is granted "partially" because, while the plaintiffs seek to have this Court prohibit the defendants from *hearing* any criminal matter which may result in imprisonment, this decision only goes so far as to prohibit the defendants from *imposing* imprisonment.

JUSTICES' COURTS

1975

FIRST SPECIAL SESSION

Engrossed Copy

H. B. No. 1 By Milly O. Bernard, Harold T. Newman, Del L. Buckner, C. DeMont Judd, Jr.

An act amending Section 78-5-4, Utah Code Annotated 1953; relating to justice of the peace courts; establishing the right of a defendant in a criminal case to be tried and sentenced by a judge who is a member of the Utah State Bar; providing that a justice who is not a member of the Utah State Bar may try and sentence any devendant who waives that right; providing for transfer if a waiver is not entered; establishing the basis upon which the prosecution may obtain a transfer from such a justice; providing for hearings before district court judges as judge *pro tempore*; and providing that a presiding judge may, as an alternative to having those matters heard before district court judges in his district, appoint a member of the Utah State Bar Association to hear those matters.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 78-5-4, Utah Code Annotated 1953, is amended to read:

78-5-4. (a) Justices' courts have jurisdiction of the following public offenses committed within the respective counties in which such courts are established:

(1) Petit larceny.

(2) Assault or battery not charged to have been committed upon a public officer in the discharge of his duties or to have been committed with such intent as to render the act a felony.

(3) Breaches of the peace, committing a willful injury to property, and all misdemeanors punishable by a fine less than $300 or by imprisonment in the county jail or municipal prison not exceeding six months, or by both such fine and imprisonment.

(b) (1) Notwithstanding any provision of this code relating to jurisdiction or venue of justice courts, every defendant shall be accorded the right to be tried and sentenced by a judge who is a member of the Utah state bar in any matter wherein the judge may have the option of imposing a jail sentence. If, upon being advised of this right at the time of arraignment, the defendant waives this right, the judge may then proceed to hear the matter and, where warranted, may impose a jail sentence. Unless such a waiver is executed by the defendant, the case shall be forthwith transferred to the nearest or most convenient court in that county, which is presided over by a judge who is a member of the Utah state bar.

(2) Even though a defendant has waived his rights as set forth in subparagraph (1) of this subsection, if the prosecution moves for a transfer to a judge who is a member of the Utah state bar and the defendant will consent to that transfer, the matter shall be forthwith transferred.

(3) Any district judge to whom a case is transferred pursuant to this subsection shall hear the matter as justice of the peace *pro tempore*.

(c) The presiding judge of the district court of any

judicial district may provide for the appointment of a justice of the peace *pro tempore*, who is a member of the Utah state bar, to hear any matters transferred pursuant to subsection (b) of this section, except in the case of municipalities, the governing body of the municipality shall appoint the justice of the peace *pro tempore* for cases arising out of violations of municipal ordinances.

(d) If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

(e) This act shall take effect upon approval.